

Chair and Members of BLNR
Board of Land and Natural Resources
State of Hawai'i

DATE: Friday, February 25, 2011

TIME: 9:00 A.M.

PLACE: Kalanimoku Building

Land Board Conference Room 132

1151 Punchbowl Street

Honolulu, Hawai'i 96813

Re:

K. CONSERVATION AND COASTAL LANDS

1. Conservation District Use Application (CDUA) HA-3568 for the Thirty Meter Telescope by the University of Hawai'i at Hilo, at Mauna Kea Science Reserve, Ka'ohe Mauka, Hamakua District, Island of Hwai'i, TMK: (3) 4-4-015:009
Chairman and Board of Land and Natural Resources:

I am Kukauakahi (Clarence Ching) and I am testifying in opposition to this CDUA.

I have previously testified at hearings put on by BLNR on the TMT in Hilo and Kailua, on Hawai'i island, at which no board member was respectably present. I incorporate from the testimonies I submitted on those two occasions to my testimony of today.

Would it be prudent for the so-called "state of hawai'i", through its agent DLNR, and DLNR's governing board, BLNR (you guys) - to grant a CDUP in light of the appeal of the Comprehensive Management Plan - which supposedly governs all of the procedures for construction and operation of this proposed telescope - to the Hawai'i Intermediate Court of Appeals? If BLNR does decide to grant an unconditional CDUP (at this time), AND the appeal is successful, would TMT Corp have an open and shut case for damages against the state for any amount of delay?

Because of this potential problem - my suggestion to you is that BLNR is not "ready, willing and able" to grant an unconditional CDUP at this time. Therefore, a CDUP should not be granted. Assumably, a "conditional" CDUP might work in the interim.

nothing. Admittedly, it does have leaders of the world of astronomy among its board members and staff.

However speaking of the entities within TMT Corp, I'm not sure what their legal statuses are - Members?

One of its major members is the University of California. One asks: "So what?"

Well - in these economic times, credit, credit worthiness and credit ability are hard to come by. However - even for a major university in a major state like California - there is economic chaos. Yep, California is the state leading the charge of bankruptcy - with a \$25.4 billion shortfall.

On a January 23, 2011, timeline, Reuters dispatched: "Congress to Consider State Bankruptcy - Legislation that would allow U.S. states to file for bankruptcy" will likely be introduced in Congress within the next month, Newt Gingrich, the former speaker of the House of Representatives and a powerful Republican party figure, told Reuters on Friday."

Reuters adds: "Is Newt Gingrich nuts or right on the money? Should states like California, New York, Illinois, and others be allowed to belly up to the bankruptcy court with tens of billions of debt?"

So, the credit-worthiness of TMT Corp. is a big issue in this CDUA, as one of its major entities - the University of California - is a "state" school in what may be the first, if not one of the first, states of the U.S. to declare bankruptcy? And - hiding under the skirts of a corporation would give the TMT organization a large economic, strategic and tactical advantage.

Conversely, it would put the so-called "state of Hawai'i" at a resultant disadvantage.

Another major question is, in addition to its credit worthiness, is whether TMT Corp is "ready, willing and able" to construct the TMT if it were successful in wresting a permit from BLNR in this CDUA process? This question also applies to de-commissioning. The total costs of putting up this monstrosity and for eventually taking it down are all part of the package.

Among other things, I believe that TMT Corp. doesn't have the total amount of funds in hand to completely pay for the project that it is currently applying for through the auspices of UH-Hilo - and has no idea where the balance of the necessary funds are to come from. This is probably one of the reasons it's been beating the bushes to find additional members.

As an additional, but very compelling question - What will be the total cumulative cost of this project in actual dollars [for both putting it up and for tearing it down (at the termination of the sub-lease)]?

During the time of the preliminaries of this project - the costs for the project that have been batted around have expanded from \$900 million, to \$1 billion, to \$1.1 billion, to \$1.4 billion. I'm not sure whether these escalated costs are inherent in the project or are due to inflation, or both. However, what I'm sure about is: That the "final" cost of this project is a moving one, that nobody knows what that number will be. So, no matter what the total projected costs put forth by TMT Corp - my guess is that it will be substantially higher than it thinks.

Not only do these costs make it difficult to assess the amount of money that a "ready, willing and able" TMT Corp has to come up with, but in the 6 to 8 to 10 year construction period for the project - the elusive final number can only be a guess. However, my own personal guess is that the number could easily approach, if not, surpass, \$2 billion.

So, how can TMT Corp guarantee to the "state" that it has this phantom amount in its pocket? My best guess is that it cannot. After all, can the future economic situation in Hawai'i and the u.s. be predicted with any measure of assurance even 5 years out? Remember, 5 years ago, who would/could have predicted that GM would go bankrupt, or that Lehman Brothers would cease to exist - that Fannie Mae and Ginnie Mae, or the u.s., or so many states, including California, would be technically bankrupt (and actually seek bankruptcy)?

Should BLNR AND the so-called "state of hawaii" essentially be the creditor to TMT Corp if these costs happen to escalate unreasonably? I don't think so. Any kind of default would leave the state with an enormous bill - to rid us of this white elephant - to bring the site back to its present "pristine" status.

On the other hand, there is nothing to say that the corporate veil of TMT Corp. cannot be pierced. BLNR can, for instance, require personal guarantees of TMT Corp's major sponsors and nations. After all, in today's economic climate, nothing is sacred.

To protect the fiscal integrity of the so-called "state of Hawai'i" - BLNR cannot be an agency, the agency, that will cause "the state" to stick its neck out excessively into such uncertainty - relying on the good faith and credit of both its sister state, California, and the u.s. federal government - to come through with 100% of what the TMT Corp. hopes will save it from its financial dilemma.

economic benefits to the state, county, etc., should not even be slightly considered in a matter such as this.

How can TMT continue to NOT deny that it will be the world's largest telescope - as both it and the EELT which is some 36 feet larger in diameter) are scheduled to come on line, if their proposed schedules actually come to pass, in 2018?

In fact, in light of current national astronomy policy, this generation of "large" telescopes (in which TMT and Magellan are candidates) are actually prototypes for yet even larger telescopes. Instead of planning and trying to implement their "not the largest telescope" as the "largest telescope in the world" - maybe TMT Corp should allow the EELT to be the "largest telescope in the world" for the time being - and then become the "genuine, largest telescope in the world" in that next generation of telescopes. Maybe by that time - the finances of both the u.s. and the state of California will be able to guarantee the finances necessary to fund such a grand project.

On a more fundamental note - you, BLNR, must judge this project primarily on the basis of "The Eight Criteria" for the development of conservation lands. That having even one criterion fail to be satisfied - means that the CDUP cannot be granted. As I have suggested in my prior testimony - there are at least a couple of items that suggest failure - that the sub-leases (by description and map) are prohibited sub-divisions and that this project cannot possibly meet the requirement to enhance the natural beauty and open space considerations of the involved area.

However, whether it concerns the EIS, or this CDUA, or both - I find it interesting that there is no mention about "the rights of native tenants" which is a condition attached to all lands of the state, whether it be noticed in the deed, lease, or whatever relevant instrument. Other rights ignored are those of Section 7 of Article XII of the Hawai'i Constitution that pertain to rights, customarily and traditionally exercised, for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, Any and all impacts on these rights are material and should be included in the CDUA.

There is no specific references to the P.A.S.H. and KaPa'akai cases - that are the leading Hawai'i Supreme Court cases on the exercise of customary and traditional rights - and, conversely, the obligation of governmental agencies to advocate for them, enforce them and protect them. As a sub-lessee of the university system - TMT Corp may have obligations concerning these rights - their operations and practices.

Kukauakahi (Clarence Ching)
Second Supplemental Testimony in Opposition to CDUA HA-3568 (TMT)
Board of Land and Natural Resources
Kailua-Kona, Hawai'i
December 3, 2010

This submission is to supplement testimony that I have previously caused to be placed on the record. My opposition to the project continues. And I reiterate my request for a contested case hearing.

Looking at the following:

1.2 OVERVIEW OF THE PROPOSED USE

On behalf of the TMT Observatory Corporation, the University of Hawai'i is seeking a Conservation District Use Permit (CDUP) from the State of Hawai'i Board of Land and Natural Resources (BLNR) that will allow the construction, operation, and eventual decommissioning of the Thirty Meter Telescope (TMT) Observatory.

The transaction appears to be one in which u.h. (a party) applies to BLNR for TMT Observatory Corporation (a third party) to construct (and eventually decommission) the TMT Observatory.

This transaction brings up the important and interesting legal principle of privity.

From Wikipedia, the free encyclopedia:

The doctrine of privity in contract law provides that a contract cannot confer rights or impose obligations arising under it on any person or agent except the parties to it.

The premise is that only parties to contracts should be able to sue to enforce their rights or claim damages as such. However, the doctrine has proven problematic due to its implications upon contracts made for the benefit of third parties who are unable to enforce the obligations of the contracting parties.

over into dreamtime.

On the other hand, the following situation must be further addressed:

7.2.3 TMT OBSERVATORY DOME FINISH

The finish for the TMT Observatory dome will be a reflective aluminum-like finish, similar to that of the Subaru observatory. The use of a reflective aluminum-like finish was based on the following considerations (1) visibility of the dome, (2) optimum performance of the observatory, and (3) reduced need of cooling air within the dome during the day. When considering the visibility of the dome, the aluminum-like exterior finish was selected over white and brown because the aluminum-like finish reflects the colors of the sky and ground, which helps the dome blend into its setting and reduces the visual impact whether the summit is bare or covered in snow.

This discussion may be partially true at certain times of the day, but, for other times, it is pure speculation.

The Subaru is totally illuminated and shines like a lighthouse by the gleaming sun at sunrise and sunset. I suspect that a TMT with the same or similar exterior finish would do the same. This adds insult to an already intolerable situation. It seems that cost considerations for cooling has been allowed to trump otherwise overwhelming negative visual concerns.

If the TMT is permitted, its exterior finish should not be the aluminum-like exterior that is suggested here.

A most important issue that must be raised is about TMT Observatory Corporation which, in the CDUA, is described as "a private non-profit corporation that will be responsible for constructing the TMT project and for managing its operations." There is no additional, especially financial, information about this entity - and financial information about any participating corporate entity is most important.

However, remember, it is University of Hawai'i- Hilo (UH-Hilo) that is the Applicant.

So, Who is TMT Observatory Corporation? And What is its relationship, legal or otherwise, to UH-Hilo? If the permit is eventually granted, and the party supposedly responsible (TMT Observatory Corporation) does not perform, Who then becomes the party that will be legally responsible for guaranteeing that the project is completed and operated according to the intent of the CDUA?

It would be a total failure of the fiduciary responsibilities of the Board of Land and Natural Resources, without the necessary documents that is being called for, to grant this permit application. If such assurances aren't presented - this CDUA must be denied.

If one is familiar with banking feasibility studies regarding mining companies - something similar may be happening here. In the case of mining companies, they drill and drill to establish an economic resource. Then an accepted expert takes that information, organizes a business plan that has the probabilities to be successful. Such banking feasibility plan is used to raise money from investors and financial institutions so that operations can take place. If everything turns out as predicted, the mine makes money, the investors are rewarded and everyone is happy.

Could it be that in this case - that a CDUP could be used to raise necessary funds (that should be in place) but are not. For instance - such a CDUP could be used to convince the NSA to dedicate its budgeted approximately \$242 Million to this project's account. Or - maybe this is the impetus needed for those observers (Japan, China and India) to become full partners in the venture.

However, if the total moneys required to complete construction are in escrow or bonded - using the CDUP to obtain any necessary funds would not be an issue.

attempt to correct it - provides an overwhelming suspicion in these proceedings of TMT's credibility. I therefore place TMT credibility into issue - and all of its pronouncements in its CDUA should be held suspect.

Furthermore, I'd like to comment on:

2.7 CHANGES IN INTENSITY OF LAND USE DUE TO SUBDIVISION (from the CDUA)

If applicable, describe how subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District. The proposed TMT project does not involve the subdivision of land.
(page 2-28 of the CDUP)

This comment seems to address one of the eight Criteria that governs uses in the Conservation District. "If applicable, describe how subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District."

The purpose of the original lease (general lease) to the University of Hawai'i by the so-called "State of Hawai'i" contemplated use of the subject lands as "an astronomy observatory." While the university is in violation of this description of the lease, its present intent seems to be for it to continue in this violation. In order to get to the present situation on Mauna Kea of multiple telescopes, u.h. has had to create sub-leases, using metes and bounds descriptions.

The creation of these "sub-leases," from a legal standpoint, is equivalent to a "sub-division" of the lands making up the original (general) lease. The purpose for creation of these sub-leases (sub-divisions) was to facilitate the construction of numbers in excess of "an" observatory, that resulted in an increase of land use intensity that the general lease did not contemplate.

Such increase in use intensity is a violation of the "no subdivision" criterion and, because there is more than one observatory currently constructed and in use on the subject lands, that any new CDUP CANNOT be granted. Therefore, this CDUA must be denied.

Next, and I find no reference to the Conservation District criterion that addresses the natural beauty of the subject premises in the CDUA. In its form for CDUA, DLNR asks:

"Describe how the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon."

reparations being made - these institutions are welcomed by the "foreign" TMT Observatory Corporation to be beneficiaries of the spirit, along with the threat of their being possible future desecrators, of our sacred mountain. And this agency, BLNR, possibly joins in that welcome.

Where is justice?

Come and wreak destruction in my house - and you're rewarded by these belligerent u.s. occupiers, who will roll out the red carpet in welcome. I most seriously object to having my sacred Mauna Kea desecrated by these malihini.

Thank you.

DATED: Hilo, Hawai'i, December 2, 2010.

Kukauakahi

Incidentally, is it the Ka Ula Trail, or is it the Kaula Trail?

These kinds of discrepancies plainly point out the non-comprehensiveness of a supposed "comprehensive" plan.

On the other hand, there are major conflicts in the plan.

For instance, the CMP that is supposedly "approved" indicates that there is a buffer on both sides of the 4-wheel drive road above Hale Pohaku. On the other hand, the maps in the Cultural Resource Management Plan shows it only on one side of the road.

As both of these "suggestions" cannot be correct - I suppose that one of them is. The plans don't give a sufficient indication of the correct situation. Such sloppy and incomplete work is a direct reflection of the process that BLNR is following in "rushing" the process and not carrying out a thorough and comprehensive analysis and review of its work product.

The following comments more specifically respond to issues contained in the Executive Summary of the proposed CRMP - but generally apply to the remainder of the CRMP text.

Specifically - I feel that the issue of cultural and religious practices should NOT be included under any "Public" issues - as they are treated as separate, specific and special issues under the Hawai'i State Constitution and in the Statutes.

OK - as to the proposed document. My comments are delineated in the "large" type - while the smaller type "statements" are extracted from the text of the proposed CRMP.

"Public and commercial uses are equally varied and include such activities as cultural and religious practices, astronomy, commercial tours and events, filming, and scientific research."

I must object to the ambiguity of this statement. While the adjective "equally" may not intend to "equalize" the listed activities - the suggestion or impression that they do cannot be overlooked.

That the Conservation zoning and the Constitution of the State of Hawaii specifically protects "cultural and religious practices" - their status as activities stand high above the other mentioned activities. The other activities are definitely NOT equal to them.

I don't think that cultural and religious practices ought to be classified with public and commercial uses.

"In developing the CRMP consultation was undertaken with a number of Hawaiian organizations regarding cultural issues, such as access and cultural practices. Different opinions were expressed during the consultation meetings regarding the appropriateness of some cultural practices and the unintended consequences that these may be having on the cultural landscape and spiritual values of the mountain. OMKM's cultural advisory group, the Kahu Kū Mauna Council, will take the lead in consulting with Hawaiian organizations and individuals with historical ties to Mauna Kea, cultural practitioners, and the Mauna Kea Management Board in developing procedures and protocols regarding cultural issues."

Cultural practices should NOT bring up issues of appropriateness or unintended consequences - that they may have on the cultural landscape and spiritual values of the mountain. The mountain has spiritual values? It should be assumed that "normal" cultural values (and possible negative unintended consequences) would NEVER have negative effects on the cultural landscape. Unintended consequences? Like what?

Actual cultural practices being personal - it doesn't follow that procedures and protocols - would not/should not trigger any processes that a management plan should be involved in. It is or should be

"contemporary" law - which allows women, children and the elderly to "sleep" safely by the side of a trail, road or thoroughfare, fully applies to Mauna Kea.

The ranger, which was ignorant of the law and maybe ill supervised, was very much out of order.

IM-5 Develop and implement a Debris Removal, Monitoring and Prevention Plan.

What debris? Observatories should remove their own debris. Tourists too. Appropriate cultural practice does NOT create debris.

Under 1.5.5 Cultural activities which are otherwise consistent with this plan and do not involve physical impacts are permitted. These activities will normally be restricted to daylight hours; special permission may be granted by UH and DLNR for night activities.

Restricting cultural practices to "daylight" is an unreasonable "regulation" of the practice of cultural rights. It is as absurd as restricting "visual" telescopes to allow operation only during daylight hours.

Cultural activities, being a Constitutionally protected activity, is not negatively subject to the CMP or its Subplans whether "consistent" or not. If anything, the CMP and its Subplans are subject to and consistent with traditional cultural and religious practices.

1.5.5 (above) is a violation of my cultural and religious rights on Mauna Kea.

Generally speaking - the CMP and the 4 Subplans do not comply with the full legal requirements and ramifications of the P.A.S.H. and KaPa'akai cases. The failure to fully comply with these cases that denote Hawai'i state case law is a major basis for my objection to all parts of the CMP and 4 Subplans.

While I have numerous additional objections to the CMP and Subplans - I will save them for another opportunity for appeal and redress. I thank you.

/s/ Clarence Ku Ching

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Because of this potential problem - my suggestion to you is that BLNR is not "ready, willing and able" to grant an unconditional CDUP at this time. Therefore, a CDUP should not be granted. Assumably, a "conditional" CDUP might work in the interim.

I am quite sure that you have been selected for your positions on BLNR because you are the superior persons that you are, consistent with personal integrity and wisdom, and that the standards of your decision making abilities are superior when compared to the general populace.

Let me remind you of the fiduciary responsibilities that each of you may have regarding the business of BLNR. After all, DLNR is the state agency that carries out the state's work as "trustee" for these so-called "ceded" lands that are held in trust. Because you represent the highest standards that I just mentioned, combined with these fiduciary responsibilities. I'm sure that you are current in your insurance policies (for mal, mis, or any other kind of feaseance) - that your decision or non-decision will be made in great prudence and reasonably based on the facts, truth and information that are presented to you.

Some of the facts, truth and information you need to make your best decision are contained in my testimony - so it's of utmost importance that you listen to what I have to say to you and for you to consider them in your best and reasonable judgment. Other facts, truth and information, I'm assuming, are being presented to you in the CDUA and by other testifiers.

I'm quite sure that each of you will recall, assuming that you've done your homework and have read all submissions to this process, that, among other things, I mentioned such an issue as the credibility of the - well I'm not sure what to call TMT Corp - "the beneficiary" - it's non-record of credit-ability, of its possible non-credit-worthiness, it's lack of a substantial past history, it's probable lack of a Standard & Poor rating and ranking, and other issues.

The BLNR, in its fiduciary capacity, must be super aware of the credit-worthiness of the beneficiary of this CDUA - the TMT Corporation. Why the astronomers decided to operate as a corporation makes their decision to do so somewhat suspect. After all, doesn't incorporation provide a means for insiders, for instance, in this case - universities, associations, nations, etc., to be shielded from fiscal liability?

This would allow these individual parties to not be liable for their actions, financial obligations, etc.

Now why would BLNR, an agent of the so-called "state of Hawai'i," be concerned about such an issue?

Well, to begin with, TMT has no track record (as a corporation). It has no credit rating, relatively no financial experience, no business experience, no

nothing. Admittedly, it does have leaders of the world of astronomy among its board members and staff.

However speaking of the entities within TMT Corp, I'm not sure what their legal statuses are - Members?

One of its major members is the University of California. One asks: "So what?"

Well - in these economic times, credit, credit worthiness and credit ability are hard to come by. However - even for a major university in a major state like California - there is economic chaos. Yep, California is the state leading the charge of bankruptcy - with a \$25.4 billion shortfall.

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Among other things, I believe that TMT Corp. doesn't have the total amount of funds in hand to completely pay for the project that it is currently applying for through the auspices of UH-Hilo - and has no idea where the balance of the necessary funds are to come from. This is probably one of the reasons it's been beating the bushes to find additional members.

Sure, the National Science Foundation (NSF) has a "quarter billion dollars" that could possibly be thrown into TMT's pot - if NSF should make that decision. However, such an action will have to depend on whether the TMT gets a vote of higher priority in NSF's list of priorities AND that the Magellan Telescope, that is also in competition for the money, is relegated to the basement. There isn't enough money for both projects. In fact, there may be even lesser funds for a singular project.

In a February 20, 2011, Washington Post article entitled "Congress, Obama brace for showdown as government shutdown looms," Paul Kane, Washington Post Staff Writer, wrote:

"The prospect of a government shutdown appeared more possible Saturday after the House passed a budget measure in the pre-dawn hours that cuts \$61 billion - and was immediately rejected by Senate Democrats and President Obama."

Kane further wrote: "The House plan, which was approved on a party-line vote at 4:40 a.m. after five days of debate, eliminates dozens of programs and offices while slashing agency budgets by as much as 40 percent. Federal funding for AmeriCorps and PBS would cease. Hundreds of millions would be cut from border security, and tens of millions would be withheld from funding for the District of Columbia."

That the NSF, in a continuation of the u.s.'s current financial predicament, would continue to have a budget to fund a new telescope at the amounts necessary may approach the ultimate in speculation.

While TMT Corp. has been trying to recruit national entities - like Japan, China and India - to join its membership stable - it cannot avoid, for instance, the dire economic straights of Japan, or the situation in India where the rising cost of food may end up causing national riots (as has happened in Tunisia and Egypt and other places).

After all, the average Indian citizen's food bill, comprising 80% of a family's income, is being sorely challenged by recent 18% increases in world food prices.

So, with heavy economic problems hounding some of its potential members, the credit-worthiness of TMT Corp. is certainly a challenging issue.

As an additional, but very compelling question - What will be the total cumulative cost of this project in actual dollars [for both putting it up and for tearing it down (at the termination of the sub-lease)]?

During the time of the preliminaries of this project - the costs for the project that have been batted around have expanded from \$900 million, to \$1 billion, to \$1.1 billion, to \$1.4 billion. I'm not sure whether these escalated costs are inherent in the project or are due to inflation, or both. However, what I'm sure about is: That the "final" cost of this project is a moving one, that nobody knows what that number will be. So, no matter what the total projected costs put forth by TMT Corp - my guess is that it will be substantially higher than it thinks.

Not only do these costs make it difficult to assess the amount of money that a "ready, willing and able" TMT Corp has to come up with, but in the 6 to 8 to 10 year construction period for the project - the elusive final number can only be a guess. However, my own personal guess is that the number could easily approach, if not, surpass, \$2 billion.

So, how can TMT Corp guarantee to the "state" that it has this phantom amount in its pocket? My best guess is that it cannot. After all, can the future economic situation in Hawai'i and the u.s. be predicted with any measure of assurance even 5 years out? Remember, 5 years ago, who would/could have predicted that GM would go bankrupt, or that Lehman Brothers would cease to exist - that Fannie Mae and Ginnie Mae, or the u.s., or so many states, including California, would be technically bankrupt (and actually seek bankruptcy)?

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On the other hand, there is nothing to say that the corporate veil of TMT Corp. cannot be pierced. BLNR can, for instance, require personal guarantees of TMT Corp's major sponsors and nations. After all, in today's economic climate, nothing is sacred.

To protect the fiscal integrity of the so-called "state of Hawai'i" - BLNR cannot be an agency, the agency, that will cause "the state" to stick its neck out excessively into such uncertainty - relying on the good faith and credit of both its sister state, California, and the u.s. federal government - to come through with 100% of what the TMT Corp. hopes will save it from its financial dilemma.

The prudent thing to do would be to have TMT Corp prove that it is "ready, willing and able" to, if a CDUP is granted, begin construction and to take the project all the way to full completion in a reasonable time. To arrive at a total cost in spite of the existent uncertainties would certainly be a major challenge. Alternatively, such an undertaking can be "guaranteed" by the issuance of a bond issued by a reputable and able agency if there is one in existence. Further assurance can be given, in writing or something akin to a treaty, by the parent organizations, states or nations of the membership entities. Of course - as it pertains to the state of California, it wouldn't mean a thing. Maybe, it wouldn't make a difference with the nations of u.s., Japan or India either.

Conclusively, it is imperative that the CDUA include a rigorous treatment of the finances of TMT Corp and its ability to complete this project in a reasonable time period - along with guarantees of the sponsors of its membership. Without these necessary informations and guarantees, the CDUP cannot be granted (at this time).

Adding to TMT Corp's woes is a rumor that its Canadian member may be considering withdrawing from TMT Corp's fold - so it can join the team efforts of the European Extremely Large Telescope (EELT) of 42 meters diameter - which again brings up "credibility" as an issue.

How can a CDUP be granted when the membership of the "beneficiary" organization (TMT Corp) is in flux? The certainty of who its credit-worthy members are/is a major consideration.

TMT Corp's propaganda machine (public relation efforts) has surely worked overtime in trying to conjure up a vision of grandeur for unsuspecting decision makers (and the public) to swallow. Even its promises for granting educational benefits to island communities through the schools are to be taken on speculation.

Promises of grants and jobs have made it easy for TMT to garner a quantity of "local" entities such as labor unions, chambers of commerce, economic boards, etc., to jump on its bandwagon - all arguing that jobs will materialize that will benefit the community and certain individuals. While construction jobs may come about - they will likely in all probability be only of a temporary nature, as I would suspect that the "real" jobs - that of scientists and administrators will be filled by imports from the continent.

These imports, if anything, will probably result in increased strains on our roads, schools, utilities, etc. - and actually be a drain on our community's resources, not the economic advantage that TMT Corp erroneously highlights. In reality,

economic benefits to the state, county, etc., should not even be slightly considered in a matter such as this.

How can TMT continue to NOT deny that it will be the world's largest telescope - as both it and the EELT which is some 36 feet larger in diameter) are scheduled to come on line, if their proposed schedules actually come to pass, in 2018?

In fact, in light of current national astronomy policy, this generation of "large" telescopes (in which TMT and Magellan are candidates) are actually prototypes for yet even larger telescopes. Instead of planning and trying to implement their "not the largest telescope" as the "largest telescope in the world" - maybe TMT Corp should allow the EELT to be the "largest telescope in the world" for the time being - and then become the "genuine, largest telescope in the world" in that next generation of telescopes. Maybe by that time - the finances of both the u.s. and the state of California will be able to guarantee the finances necessary to fund such a grand project.

On a more fundamental note - you, BLNR, must judge this project primarily on the basis of "The Eight Criteria" for the development of conservation lands. That having even one criterion fail to be satisfied - means that the CDUP cannot be granted. As I have suggested in my prior testimony - there are at least a couple of items that suggest failure - that the sub-leases (by description and map) are prohibited sub-divisions and that this project cannot possibly meet the requirement to enhance the natural beauty and open space considerations of the involved area.

However, whether it concerns the EIS, or this CDUA, or both - I find it interesting that there is no mention about "the rights of native tenants" which is a condition attached to all lands of the state, whether it be noticed in the deed, lease, or whatever relevant instrument. Other rights ignored are those of Section 7 of Article XII of the Hawai'i Constitution that pertain to rights, customarily and traditionally exercised, for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, Any and all impacts on these rights are material and should be included in the CDUA.

There is no specific references to the P.A.S.H. and KaPa'akai cases - that are the leading Hawai'i Supreme Court cases on the exercise of customary and traditional rights - and, conversely, the obligation of governmental agencies to advocate for them, enforce them and protect them. As a sub-lessee of the university system - TMT Corp may have obligations concerning these rights - their operations and practices.

As a major issue - there is no discussion in the CDUA about whether or not the applicant has a sub-lease and a right to even be on the mountain. I would suppose that details of a sub-lease and of rents and conditions of the sub-lease, if any, would be material to this application. There is no such discussion. The amount of a reasonable rents and an existent sub-lease would be material to the granting of a CDUP.

On another note - I find that the procedure by which a CDUA is submitted, especially in this situation, is nebulous. It seems to me that the actual party that will be involved in the transaction (with BLNR) be the party that would be a signatory of the CDUA. See my discussion of "privity" in my earlier testimony. One of the major issues, the performer's credibility, which I've brought up earlier and in this testimony, can be overlooked, and, in fact, hidden.

How do we know that all of the facts, details, requirements, etc., necessary to a CDUA have been included in this CDUA? Or that representations made are actually the truth? Does UH-Hilo certify that the entirety of its representations made on behalf of TMT Corp are the truth? Or, where does TMT Corp make similar claims and oaths? I suggest that all representations made by UH-Hilo contained in the CDUA are mere heresay - and may have nothing to do with the real truth of the matter. That BLNR should grant a CDUP on this possibly fictitious information is ridiculous.

This entire process misses the legal necessities of a valid business transaction. Proper protections that would/could keep the so-called "state of hawaii" from possible harms, and to maintain its integrity, are absent. The CDUP cannot be granted.

Therefore, for all the reasons included in my testimony, and for those I have chosen not to include, in BLNR's wisdom and prudence - the CDUP that this action seeks should not be granted.

/s/ Kukauakahi

Kukauakahi (Clarence Ching)
Second Supplemental Testimony in Opposition to CDUA HA-3568 (TMT)
Board of Land and Natural Resources
Kailua-Kona, Hawai'i
December 3, 2010

This submission is to supplement testimony that I have previously caused to be placed on the record. My opposition to the project continues. And I reiterate my request for a contested case hearing.

Looking at the following:

1.2 OVERVIEW OF THE PROPOSED USE

On behalf of the TMT Observatory Corporation, the University of Hawai'i is seeking a Conservation District Use Permit (CDUP) from the State of Hawai'i Board of Land and Natural Resources (BLNR) that will allow the construction, operation, and eventual decommissioning of the Thirty Meter Telescope (TMT) Observatory.

The transaction appears to be one in which u.h. (a party) applies to BLNR for TMT Observatory Corporation (a third party) to construct (and eventually decommission) the TMT Observatory.

This transaction brings up the important and interesting legal principle of privity.

From Wikipedia, the free encyclopedia:

The doctrine of privity in contract law provides that a contract cannot confer rights or impose obligations arising under it on any person or agent except the parties to it.

The premise is that only parties to contracts should be able to sue to enforce their rights or claim damages as such. However, the doctrine has proven problematic due to its implications upon contracts made for the benefit of third parties who are unable to enforce the obligations of the contracting parties.

Under this definition - BLNR would have privity with UH, but not with the TMT corporation. This doesn't say whether or not UH has privity with TMT. However, it can probably be assumed that it does. The fact, one way or the other isn't disclosed in the CDUA - but it should. If there is no privity between BLNR/DLNR and TMT - there may well be many loose strings that could cause future potential problems.

For instance - if there are any screwups committed by TMT - How does BLNR/DLNR place any kind of liability on TMT (if there is no privity between the two)? Or, is it intended that u.h. be responsible to BLNR/DLNR for any screwups that TMT commits on the mountain? Whether u.h. would be liable for such a situation isn't clear, and it should. Or, Is it that u.h. is TMT's agent? Or is there some other kind of relationship that we have no knowledge about?

Responsibility should be placed where responsibility is. The relationships acquiesced to by this CDUP could create dangerous hurdles for BLNR/DLNR and has an odoriferous smell. At the very least, a document outlining the privity that exists between u.h. and TMT should be part of the CDUA. Therefore, unless such documentation is submitted, this CDUA should be denied.

Furthermore, at:

7.2.2 VISIBILITY OF THE TMT OBSERVATORY

The results of the viewshed analysis conducted for the proposed project concluded that it would be potentially visible from roughly 14 percent of the island area, as summarized in Table 7.3 and depicted in Figure 7.3. One or more of the existing observatories is visible from nearly all of this area. According to 2000 U.S. Census data, approximately 15 percent of Hawai'i's population, or 23,000 people, live within the viewshed of the TMT Observatory.

While the occurrence of possible negative visual impacts is probably intended to be minimized - as "only" 15 percent of the island's population is supposedly affected by viewing from the subject areas - the inferential conclusion is probably that the effect has therefore been mitigated - The fact remains that this proportion of the island's population is affected 100% by having the TMT in sight at all times of the day. I'm sure that the failure to characterize this effect on the affected populace is unintentional.

However, whether intentional or not - my personal views of the mountain from where I live in Waimea will be 100% affected. Interestingly, as it happens, images of the mountain, complete with observatories, often linger in my mind even while I'm not directly observing the mountain. The general result is that the effect happens - and it happens at all times of the day AND night. It even carries

over into dreamtime.

On the other hand, the following situation must be further addressed:

7.2.3 TMT OBSERVATORY DOME FINISH

The finish for the TMT Observatory dome will be a reflective aluminum-like finish, similar to that of the Subaru observatory. The use of a reflective aluminum-like finish was based on the following considerations (1) visibility of the dome, (2) optimum performance of the observatory, and (3) reduced need of cooling air within the dome during the day. When considering the visibility of the dome, the aluminum-like exterior finish was selected over white and brown because the aluminum-like finish reflects the colors of the sky and ground, which helps the dome blend into its setting and reduces the visual impact whether the summit is bare or covered in snow.

This discussion may be partially true at certain times of the day, but, for other times, it is pure speculation.

The Subaru is totally illuminated and shines like a lighthouse by the gleaming sun at sunrise and sunset. I suspect that a TMT with the same or similar exterior finish would do the same. This adds insult to an already intolerable situation. It seems that cost considerations for cooling has been allowed to trump otherwise overwhelming negative visual concerns.

If the TMT is permitted, its exterior finish should not be the aluminum-like exterior that is suggested here.

A most important issue that must be raised is about TMT Observatory Corporation which, in the CDUA, is described as "a private non-profit corporation that will be responsible for constructing the TMT project and for managing its operations." There is no additional, especially financial, information about this entity - and financial information about any participating corporate entity is most important.

However, remember, it is University of Hawai'i- Hilo (UH-Hilo) that is the Applicant.

So, Who is TMT Observatory Corporation? And What is its relationship, legal or otherwise, to UH-Hilo? If the permit is eventually granted, and the party supposedly responsible (TMT Observatory Corporation) does not perform, Who then becomes the party that will be legally responsible for guaranteeing that the project is completed and operated according to the intent of the CDUA?

For instance, there is no relevant information about TMT Observatory Corporation and its legal relationship to UH-Hilo, the Applicant, or its ability to adequately build the observatory that is being applied for. What is its financial ability or history? What is its operational history?: Has it participated and completed similar projects during its existence? Who are its financial backers?

There is no copy of TMT Observatory Corporation's Profit and Loss or Assets and Debts statements. Such documentation is absolutely necessary to be part of the record - so responsible decisions on whether to grant or deny the CDUA can be made. How else can responsible decisions be made on projects of this size and importance?

For example, Does TMT Observatory Corporation have the total funding in hand necessary to construct and complete (and even de-commission when necessary) the applied for project? Is TMT Observatory Corporation ready and willing to perform? Where are the assurances that the Project will be completed as represented so that the State of Hawai'i (and the people of Hawai'i), if the project fails, will not have a white elephant on its hands.

If TMT Observatory Corporation fails to have the credit ability to complete the project, are there individuals or institutions connected to the corporation who will give their personal/institutional guarantees for completion to happen?

So, at the very least, it is necessary that financial statements to the financial fitness of this party (the corporation) be on the record. Ideally, the complete budgeted amount of the project should be deposited with an escrow agent - if only to prove that this CDUA is not a frivolous attempt to confuse the system. Or, if the quality of assurances is superior - a bond by a top-rated financial institution could be accepted.

With a bit of persistence, any individual or institution of any persuasion could submit a CDUA like this one. And it would be BLNR's/DLNR's obligation to verify that applicant's abilities.

Additionally, because of the present economic situation in the United States and the State of California (from whence the major players originate), even if total funding is available - in the 7 years proposed for construction - that that amount, because of a suggested super inflation on the horizon, may be insufficient to complete the project.

I suggest that the financial issues brought up here must all be responsibly addressed with answers adequate to make the intended project completion 100% probable.

It would be a total failure of the fiduciary responsibilities of the Board of Land and Natural Resources, without the necessary documents that is being called for, to grant this permit application. If such assurances aren't presented - this CDUA must be denied.

If one is familiar with banking feasibility studies regarding mining companies - something similar may be happening here. In the case of mining companies, they drill and drill to establish an economic resource. Then an accepted expert takes that information, organizes a business plan that has the probabilities to be successful. Such banking feasibility plan is used to raise money from investors and financial institutions so that operations can take place. If everything turns out as predicted, the mine makes money, the investors are rewarded and everyone is happy.

Could it be that in this case - that a CDUP could be used to raise necessary funds (that should be in place) but are not. For instance - such a CDUP could be used to convince the NSA to dedicate its budgeted approximately \$242 Million to this project's account. Or - maybe this is the impetus needed for those observers (Japan, China and India) to become full partners in the venture.

However, if the total moneys required to complete construction are in escrow or bonded - using the CDUP to obtain any necessary funds would not be an issue.

Kukauakahi (Clarence Ching)
Supplemental Testimony in Opposition to CDUA HA-3568 (TMT)
Board of Land and Natural Resources
Hilo, Hawai'i
December 2, 2010

I am Kukauakahi (Clarence Ching) and I am supplementing earlier comments I submitted with that of the so-called Mauna Kea Hui. I will also, at this time, reiterate my request for a contested case hearing.

I object to this hearing - on the subject CDUA (TMT) and by this Board. This board does not have jurisdiction as an agent of the so-called State of Hawai'i or over this subject matter.

The fictitious so-called Annexation of Hawai'i supposedly taking place in 1898, by a Joint Resolution of the congress of the united states of america failed to do what it is purported that it did.

There was no treaty (of annexation)- therefore no annexation – and Hawai'i today is under belligerent occupation of the u.s. of a. However, under protest, I will present testimony supplementary to my earlier written testimony.

Tonight - we are here to discuss the TMT (The Thirty Meter Telescope) - with a collector of 30 meters in diameter - the largest telescope in the world - that is, if everything turns out like the TMT people hope, when it becomes operational in 2018. However, what they don't tell us is that the European Extremely Large Telescope that has a collector of 42 meters is proposed to also be operational in 2018.

In other words, in the year that they are both to become operational - if everything turns out as planned - TMT will not be the largest telescope in the world. However, with these facts in place - Has anyone ever heard TMT PR saying that it may NOT be the largest telescope in the world? NO - TMT has gotten such an excessively large amount of mileage out of this bogus claim - it has probably decided that admitting the fact that it wouldn't/couldn't be the largest telescope in the world would hurt its public image.

To allow so many of the public to continue to believe in the mythology of TMT as the largest telescope in the world - without making the slightest

attempt to correct it - provides an overwhelming suspicion in these proceedings of TMT's credibility. I therefore place TMT credibility into issue - and all of its pronouncements in its CDUA should be held suspect.

Furthermore, I'd like to comment on:

2.7 CHANGES IN INTENSITY OF LAND USE DUE TO SUBDIVISION (from the CDUA)

If applicable, describe how subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District. The proposed TMT project does not involve the subdivision of land.
(page 2-28 of the CDUP)

This comment seems to address one of the eight Criteria that governs uses in the Conservation District. "If applicable, describe how subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District."

The purpose of the original lease (general lease) to the University of Hawai'i by the so-called "State of Hawai'i" contemplated use of the subject lands as "an astronomy observatory." While the university is in violation of this description of the lease, its present intent seems to be for it to continue in this violation. In order to get to the present situation on Mauna Kea of multiple telescopes, u.h. has had to create sub-leases, using metes and bounds descriptions.

The creation of these "sub-leases," from a legal standpoint, is equivalent to a "sub-division" of the lands making up the original (general) lease. The purpose for creation of these sub-leases (sub-divisions) was to facilitate the construction of numbers in excess of "an" observatory, that resulted in an increase of land use intensity that the general lease did not contemplate.

Such increase in use intensity is a violation of the "no subdivision" criterion and, because there is more than one observatory currently constructed and in use on the subject lands, that any new CDUP CANNOT be granted. Therefore, this CDUA must be denied.

Next, and I find no reference to the Conservation District criterion that addresses the natural beauty of the subject premises in the CDUA. In its form for CDUA, DLNR asks:

"Describe how the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon."

The Applicant completely ignored this part of the application process. I argue that there is NO way that Applicant can construct an observatory that will preserve or improve the physical and environmental aspects, such as natural beauty of the subject land, and thus would violate this criterion,

Because it is a violation of this Conservation District criterion - this Application must be denied.

Also, I must energetically object to the manner of measuring impacts of observatories on Mauna Kea - by simply adding up the number of observatories. Such a non-method offers no appropriate method for assessing the actual impacts of a facility under consideration. In other words - a child's 2 inch (in diameter) toy telescope, according to the present system, is equivalent to a monster telescope like the TMT.

On the other hand, 11 monster telescopes like the European Extremely Large Telescopes could cover the mountain, with overwhelming negative impacts on environment and cultural sites, and continue to be allowable under the present system.

Of course, this situation should have been addressed and established in the workup of the non-comprehensive Comprehensive Management Plan that is currently under litigation. This kind of sloppy operation is typical of u.h.'s tenure on the mountain. BLNR's lack of foresight hasn't benefitted the environment and cultural concerns either. That TMT Observatory Corporation has a collection of "national" astronomy collaborators and observers - who may be potential partners - smacks of intrigue. If these institutions are potential partners, then why aren't they full partners at this time. Is it possible that some kind of game playing may be going on? So, I suppose if there are any possible objections against any or all of them, it can be argued that it/they aren't a partner - and the situation can be shined off.

I object to having "national" institutions of foreign nations who are attempting to ride on the coattails of the Hawaiian Kingdom and its present subjects.

While key players of this dramatic production may have short memories - there are people like me who remember the bombs from Japanese planes that annihilated Pearl Harbor in 1941. Or, not too far in the past, Japanese and Canadian naval guns bombarded the sacred island of Kahoolawe in the RimPac War Games, guaranteeing the presence of deadly unexploded ordinance that are waiting for unsuspecting humans to detonate. Despite the commission of these crimes against the 'aina and people of Hawai'i - with no apologies, cleanups or

reparations being made - these institutions are welcomed by the "foreign" TMT Observatory Corporation to be beneficiaries of the spirit, along with the threat of their being possible future desecrators, of our sacred mountain. And this agency, BLNR, possibly joins in that welcome.

Where is justice?

Come and wreak destruction in my house - and you're rewarded by these belligerent u.s. occupiers, who will roll out the red carpet in welcome. I most seriously object to having my sacred Mauna Kea desecrated by these malihini.

Thank you.

DATED: Hilo, Hawai'i, December 2, 2010.

Kukauakahi

**Board of Land and Natural Resources
Meeting of March 25, 2010
Hilo, Hawai'i**

From: Clarence ku Ching
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Amended Comments on the proposed Cultural Resource Management Plan

Let me start out with the conclusion that the CMP and the 4 Subplans do not comprehensively make up a plan, but moreso, they are mostly plans to make further plans. They are surely not comprehensive. My comments include references to items that directly violate the practice of my constitutionally protected cultural and religious rights.

As stated by many of the supporters of the CMP - a year ago - it is just the first steps that may eventually amount to a "comprehensive" plan. I am NOT a supporter.

First of all - Mauna Kea is primarily zoned "Conservation." Astronomy is only a sub-use - and is subservient to the primary Conservation zoning.

However, an innocent observer of the mountain would have a hard time believing it to be conservation-zoned - as it looks to be about as dense as Waikiki. How soon will the interests of astronomy request a change of primary zoning to "Astronomy," with a change for "Conservation" as a sub-zone?

Something is definitely wrong.

The CMP - as "approved" and "to be approved" subject to court challenge - makes very little mention of the "Conservation" status on the mountain. There isn't even a mention of the (8) "Criteria" for Conservation Zones which are fundamentally basic requirements and/or how Astronomy must comply with all requirements of the Conservation Zone, except where specifically excepted. A discussion on the "Criteria" should be, must be, included.

For instance, that one of the criteria requires any development to enhance the NATURAL BEAUTY is completely ignored. Taking the adjective "natural" at its most basic definition - present observatory development on Mauna Kea is akin to calling the Frankenstein monster beautiful!

I must object to the process that DLNR has used to establish the Comprehensive Management Plan, the 4 Subplans - that this Cultural Resource Management Plan (CRMP) is intended to be a part of - as it involves applications and procedures for Contested Case Hearings - of which I have been an applicant, and for this process, am. And I respectfully request and apply for contested case hearings on the proposed subplans on the agenda today.

Additionally, I wish to incorporate by reference, the testimonies of KAHEA, Kealoha Pisciotta, Keo Van Gough, Debbie Ward, Nelson Ho and Fred Stone into my testimony.

Secondly, a brief comment on the proposed Public Access Subplan, the Ka Ula Trail, that I consider to be a major trail on Mauna Kea, is NOT mentioned (I have recently been updated on the fact that the writers of the Subplan have included it upon my urging at the public meetings) in the proposed Subplan, nor shown on the accompanying maps.

Incidentally, is it the Ka Ula Trail, or is it the Kaula Trail?

These kinds of discrepancies plainly point out the non-comprehensiveness of a supposed "comprehensive" plan.

On the other hand, there are major conflicts in the plan.

For instance, the CMP that is supposedly "approved" indicates that there is a buffer on both sides of the 4-wheel drive road above Hale Pohaku. On the other hand, the maps in the Cultural Resource Management Plan shows it only on one side of the road.

As both of these "suggestions" cannot be correct - I suppose that one of them is. The plans don't give a sufficient indication of the correct situation. Such sloppy and incomplete work is a direct reflection of the process that BLNR is following in "rushing" the process and not carrying out a thorough and comprehensive analysis and review of its work product.

The following comments more specifically respond to issues contained in the Executive Summary of the proposed CRMP - but generally apply to the remainder of the CRMP text.

Specifically - I feel that the issue of cultural and religious practices should NOT be included under any "Public" issues - as they are treated as separate, specific and special issues under the Hawai'i State Constitution and in the Statutes.

OK - as to the proposed document. My comments are delineated in the "large" type - while the smaller type "statements" are extracted from the text of the proposed CRMP.

"Public and commercial uses are equally varied and include such activities as cultural and religious practices, astronomy, commercial tours and events, filming, and scientific research."

I must object to the ambiguity of this statement. While the adjective "equally" may not intend to "equalize" the listed activities - the suggestion or impression that they do cannot be overlooked.

That the Conservation zoning and the Constitution of the State of Hawaii specifically protects "cultural and religious practices" - their status as activities stand high above the other mentioned activities. The other activities are definitely NOT equal to them.

I don't think that cultural and religious practices ought to be classified with public and commercial uses.

"In developing the CRMP consultation was undertaken with a number of Hawaiian organizations regarding cultural issues, such as access and cultural practices. Different opinions were expressed during the consultation meetings regarding the appropriateness of some cultural practices and the unintended consequences that these may be having on the cultural landscape and spiritual values of the mountain. OMKM's cultural advisory group, the Kahu Kū Mauna Council, will take the lead in consulting with Hawaiian organizations and individuals with historical ties to Mauna Kea, cultural practitioners, and the Mauna Kea Management Board in developing procedures and protocols regarding cultural issues."

Cultural practices should NOT bring up issues of appropriateness or unintended consequences - that they may have on the cultural landscape and spiritual values of the mountain. The mountain has spiritual values? It should be assumed that "normal" cultural values (and possible negative unintended consequences) would NEVER have negative effects on the cultural landscape. Unintended consequences? Like what?

Actual cultural practices being personal - it doesn't follow that procedures and protocols - would not/should not trigger any processes that a management plan should be involved in. It is or should be

beyond the scope of any management or administrative concerns of "the" plan.

To be a "qualified" member of Kahu Ku Mauna - one should specifically be an active cultural and religious practitioner on Mauna Kea. An "active" Mauna Kea cultural practitioner need not be a person of "Hawaiian" ancestry, but one whose cultural background and practices are specifically that of Hawaiian culture and religion as it pertains specifically to Mauna Kea.

However, as it is very correct in Hawaiian culture to elevate the wisdom of Kupuna - I would suggest the Kupuna-ness be a qualification of a member of Kahu ku Mauna. Where else would one expect that the wisdom of the culture be located?

CR-1 Kahu Kū Mauna shall work with families with lineal and historical connections to Mauna Kea, cultural practitioners, and other Native Hawaiian groups, including the Mauna Kea Management Board's Hawaiian Culture Committee, toward the development of appropriate procedures and protocols regarding cultural issues.

Developing "appropriate" procedures and protocols "regarding" cultural issues is one thing. Developing "appropriate" procedures and protocols "regarding" the practice of culture is something else - something that should be beyond the scope of any plan that BLNR should approve or be concerned with.

The language above - that "Kahu ku Mauna shall work ... toward the development of appropriate procedures and protocols regarding cultural issues" is excessively broad and is an intrusion into Constitutional protections.

My recommendation is that there should be specific language stating my "above" concern. Without such a specific prohibition - the rights of practitioners may be further violated.

ACT-5 Implement policies to reduce impacts of recreational hiking

Cultural hiking, which is part of my cultural practice, is not a close relative of recreational hiking - and should NOT be considered to be similar or the same - and surely NOT included here by association or reference.

As a cultural hiker, I visit a number of cultural and religious sites throughout the mountain. If the difference between "cultural" and "recreational" hiking is not distinguished, by NOT distinguishing one from the other - my right to hike, and the ability to follow all the protocols of my practice, would be violated.

P-1 Comply with all applicable federal, state, and local laws, regulations, and permit conditions related to activities in the UH Management Areas.

Cultural and (Hawaiian) religious practices should NOT ever be subject to permitting (as the above can possibly be interpreted as stating) - as they have their basis as "Rights" - and permitting connotes "having to ask for permission." However, as to the "regulation" of the reasonable practice of those rights - which the law allows - that is a different issue.

One of my personal experiences on Mauna Kea involved an overnight stay - which took place adjacent to the Mauna Kea-Humu'ula Trail. So, waking in the morning, expecting everything to be serene, but with a Mauna Kea ranger disturbing the silence with his excessively close presence, and with his camera invading our peaceful and spiritual environment - was a disturbance of my, and others', cultural protocols and practices. That I believe that our presence on the mountain - as part of, as I stated, cultural and religious protocol, was the subject of a complaint to DLNR - was especially unwarranted and troublesome.

The Law of the Splintered Paddle, among other things - not having been specifically revoked by

"contemporary" law - which allows women, children and the elderly to "sleep" safely by the side of a trail, road or thoroughfare, fully applies to Mauna Kea.

The ranger, which was ignorant of the law and maybe ill supervised, was very much out of order.

IM-5 Develop and implement a Debris Removal, Monitoring and Prevention Plan.

What debris? Observatories should remove their own debris. Tourists too. Appropriate cultural practice does NOT create debris.

Under 1.5.5 Cultural activities which are otherwise consistent with this plan and do not involve physical impacts are permitted. These activities will normally be restricted to daylight hours; special permission may be granted by UH and DLNR for night activities.

Restricting cultural practices to "daylight" is an unreasonable "regulation" of the practice of cultural rights. It is as absurd as restricting "visual" telescopes to allow operation only during daylight hours.

Cultural activities, being a Constitutionally protected activity, is not negatively subject to the CMP or its Subplans whether "consistent" or not. If anything, the CMP and its Subplans are subject to and consistent with traditional cultural and religious practices.

1.5.5 (above) is a violation of my cultural and religious rights on Mauna Kea.

Generally speaking - the CMP and the 4 Subplans do not comply with the full legal requirements and ramifications of the P.A.S.H. and KaPa'akai cases. The failure to fully comply with these cases that denote Hawai'i state case law is a major basis for my objection to all parts of the CMP and 4 Subplans.

While I have numerous additional objections to the CMP and Subplans - I will save them for another opportunity for appeal and redress. I thank you.

/s/ Clarence Ku Ching

